International Labour Conference

I

INTRODUCTION

At its 22nd sitting, on 22 June 1934, the Eighteenth Session of the International Labour Conference decided, on a record vote, by 99 votes nem. con., to place the following question on the Agenda of its next (Nineteenth, 1935) Session for the second discussion :

> Maintenance of rights in course of acquisition and acquired rights under invalidity, old-age and widows' and orphans' insurance on behalf of workers who transfer their residence from one country to another.

This decision followed upon the adoption by 93 votes, *nem. con.*, of the report and draft conclusions submitted to the Conference by the Committee to which had been referred the preliminary report (Grey Report) drawn up by the International Labour Office for the first discussion of the question at the Eighteenth Session.

On the basis of the conclusions adopted by the Eighteenth Session of the Conference, the Office, in accordance with Article 6 (6) of the Standing Orders of the Conference, has drawn up the Questionnaire which is to serve for the consideration of international regulations in the form of a Draft Convention at the second discussion to take place at the Nineteenth Session in 1935. This Questionnaire is submitted to Governments in Section III of this booklet for their consideration and replies.

As a help to Governments in framing their replies, Section II of this booklet reproduces the report and draft conclusions of the competent Committee of the Eighteenth Session, and also gives a brief account of the discussion on this report and draft conclusions which took place in the plenary sitting of the Conference.

On the basis of the replies of Governments to the Questionnaire the Office will, in accordance with Article 6 (7) of the Standing Orders of the Conference, draw up a final report (Blue Report) for submission to the Nineteenth Session of the Conference for final discussion and decision.

II

DISCUSSION AT THE 18TH SESSION OF THE CONFERENCE

A.— Report of the Committee on the maintenance of pension rights to the 18th Session of the Conference.

INTRODUCTION

At its Seventeenth Session (1933), the Conference adopted six Draft Conventions on invalidity, old-age, and widows' and orphans' insurance. Three deal respectively with invalidity insurance, old-age insurance, and widows' and orphans' insurance for persons employed in industrial or commercial undertakings, in the liberal professions, and for outworkers and domestic servants ; and the remaining three with the same three branches of insurance for persons employed in agricultural undertakings.

These six Draft Conventions contain provisions governing scope, benefits, financial resources, insurance institutions, settlement of disputes, the position of foreigners, etc. They do not, however, cover the maintenance of migrant workers' rights.

Having taken note of the incompleteness of the data obtained from the consultation of Governments on that occasion, the 1933 Session of the Conference decided, in accordance with the proposals of the Office, to postpone the study of the question of the maintenance of pension rights until its next Session. Accordingly, it decided to place the following item on the Agenda of the 1934 Session for first discussion :

> "Maintenance of acquired rights and rights in course of acquisition under invalidity, old-age, and widows' and orphans' insurance on behalf of workers who transfer their residence from one country to another."

The Grey Report prepared by the Office in accordance with paragraph 4 of Article 6 of the Standing Orders of the Conference analysed those provisions of national legislation and bilateral treaties which deal with the maintenance of migrant workers' rights. The list of points on which the Office proposed that the Governments should be consulted was divided into five parts : I. Establishment of international scheme ; II. Maintenance of rights in course of acquisition ; III. Maintenance of acquired rights ; IV. Mutual assistance in administration ; V. Operation of international scheme.

Composition of Committee and Appointment of Officers

The Committee on the maintenance of pension rights set up by the Conference at its Fourth Plenary Sitting consisted of 32 members, that is to say, 16 Government members, 8 Employers' members and 8 Workers' members. The Officers and Secretariat of the Committee were as follows:

Chairman : Mr. Anselmi, Italian Government Delegate ;
Vice-Chairmen : Mr. Forgeron, French Employers' adviser ;
Mr. Buisson, French Workers' adviser ;
Reporter : Mr. Stern, Czechoslovak Government adviser ;
Representative of the Secretary-General : Mr. Tixier ;
Experts : Mr. Stein and Mr. Feraud ;
Secretaries : Mr. Abramson and Mr. Stack.

The Committee held fifteen sittings, in which the list of points proposed by the Conference was thoroughly examined.

I. — Establishment of International Scheme

1. The terms in which the item on the Agenda is formulated indicate that the Governments are to be consulted on the two problems :

(*a*) the maintenance of rights in course of acquisition ;

(*b*) the maintenance of acquired rights.

The majority of national laws concerning invalidity, old-age, and widows' and orphans' insurance lay down as a condition for the award of pension that rights in course of acquisition should have been maintained. They make the award of an invalidity or widows' or orphans' pension, and sometimes of an old-age pension as well, subject to the completion of a qualifying period and the maintenance of rights in course of acquisition.

The simultaneous requirement that the qualifying period should be completed and that rights in course of acquisition should be maintained often proves impossible to fulfil in the case of migrants. If at the time of his departure for the other country a worker has not yet completed the qualifying period in the country of emigration, the only course open to him will be to continue his insurance in that country, should he have the means of doing so, for otherwise he will lose all credit for the contributions hitherto paid in respect of him. Moreover, even if at the time of his departure he has already completed the qualifying period, it will, nevertheless, be necessary for him to maintain his rights in the country of emigration by subsequent payments. The insur-

ance scheme in the country of immigration will, however, take no account of the contributions which have been credited to the migrant in the country of emigration ; it will, in turn, require the completion of a qualifying period and the maintenance of rights under its own provisions. Such situations are of frequent occurrence, and they result in unjustified hardship to migrants and their families. It is in order to avoid them that an international scheme has to be organised for the maintenance of rights in course of acquisition.

The maintenance of acquired rights is inherent in every scheme of insurance properly so-called, since insurance benefits should be payable in virtue of strict legal right. Under many schemes, however, the application of this principle is subject to restrictions, particularly in the case of pensioners who take up their residence abroad : the continuance of the pension may be conditional upon the authorisation of the insurance institution liable for benefit, or the pension may be replaced by a lump sum smaller than its capitalised value, or even suspended in whole or in part, etc. In the interest of social insurance pensioners who have to change their country of residence, it is highly desirable to establish internationally the principle of the maintenance of acquired rights.

In order to obtain the opinion of the Governments on the possibility of establishing an international scheme for the maintenance of rights in course of acquisition which should be capable of immediate application, the Office had proposed the following text :

1. Principle of the establishment, on behalf of workers who transfer their residence from one country to another, of an international scheme to organise, under compulsory invalidity, old-age and widows' and orphans' insurance :

(a) the maintenance of rights in course of acquisition ;

(b) the maintenance of acquired rights.

The Committee had to consider four amendments.

The first amendment proposed to widen the Office text by substituting for the words " workers who tranfer their residence from one country to another " the words

on behalf of persons who are insured or reside successively in two or more countries, or who reside outside the country in which the insurance institution liable for benefit is established, and on behalf of the dependants of such persons.

The second amendment, on the contrary, was to the effect that the words " on behalf of workers who transfer their residence from one country to another " should be deleted from the Office text.

The object of the third amendment was to substitute for the words « their residence » the words « their place of work (undertaking, business, office, occupation) », but this amendment was withdrawn by its author.

The Committee did not accept the first two amendments and adopted by 22 votes, without opposition, the Office text.

Nevertheless, by 21 votes to 20, the Committee decided to add to the Office text a phrase proposed by a Workers' member to the effect that the maintenance of acquired rights is to apply to non-contributory as well as to contributory pensions.

In the course of discussion the Office, in replying to a question put by a Workers' member, made it clear that in its view the scope of the scheme for the maintenance of rights included frontier workers.

The definitive text of the first point, as established by the Committee, reads as follows :

> 1. Principle of the establishment, on behalf of workers who transfer their residence from one country to another, of an international scheme to organise, under compulsory invalidity, old-age, and widows' and orphans' insurance :
>
> (a) the maintenance of rights in course of acquisition ;
>
> (b) the maintenance of acquired rights (including non-contributory pensions).

II. — Maintenance of Rights in Course of Acquisition

A. *Beneficiaries under International Scheme*

2. *Definition of beneficiaries*

It was necessary at the outset to define the classes of persons to whom the scheme was to apply and the Office had prepared the following text :

> Application of the scheme to workers affiliated in succession to insurance institutions in two or more States Members adopting the scheme, and to the dependants of such workers

This text was approved by the Committee.

3. *Nationality of beneficiaries*

The political status of workers may be used as a criterion for a more restrictive definition of the beneficiaries than that contained in the preceding point : for example, the advantages of the international scheme may be available, not to all persons irrespective of nationality, but only to nationals of Members adopting the scheme. For this reason, the

Office inserted a special point dealing with the nationality of beneficiaries under the scheme:

3. Nationality of beneficiaries:

Application of the scheme:

(a) Either to all persons irrespective of nationality;

(b) or only to persons who are nationals of Members adopting the scheme.

A Government member proposed to add to the Office text a third paragraph which read as follows:

(c) or, where paragraph *(b)* is adopted, also to persons who have no nationality.

The Committee on a record vote adopted this amendment by 22 votes to 6.

Point 3, as thus enlarged, was then adopted by 24 votes, without opposition.

B. *Totalisation of Insurance Periods*

4. *Totalisation for maintaining rights*

The scheme must in the first place facilitate the maintenance of rights in course of acquisition. There are a few insurance schemes under which each contribution represents a single premium which purchases a deferred annuity: the validity of each contribution is unlimited, irrespective of later payments. Under all other insurance schemes, the validity of any contribution is only maintained automatically for a prescribed term, since the financial stability of the insurance scheme presupposes that contributions will be paid in respect of insured persons with a certain regularity throughout their working life. Under these latter schemes a contribution credited to the insured person does not give an unconditional right to benefit, but only a possibility of acquiring a right, the realisation of which is subject to the maintenance of the validity of the contribution.

It was therefore necessary at the outset to lay down the principle of the totalisation of insurance periods for the purpose of maintaining rights in course of acquisition, and then to indicate the periods which would fall to be totalised.

The Office had proposed the following text:

4. For the purpose of maintaining rights in course of acquisition as against each insurance institution concerned, totalisation of:

(a) contribution periods;

(b) and also periods in respect of which contributions are not payable but during which rights are maintained :
(1) either under the law of at least one of the institutions concerned ;
(2) or only under the law of the particular institution concerned ,

(c) and further, periods during which a pension is paid by any other institution concerned.

Only one amendment, by a Government member, was proposed : it was to the effect that paragraph (c) of the Office text should be replaced by a paragraph reading as follows :

(c) and further, periods :
(1) during which a pension is paid by an invalidity, old-age, widows' and orphans' insurance institution of any other Member ,
(2) during which a pension or other cash benefit is paid under another branch of social insurance of another Member, in so far as a corresponding pension or other cash benefit, paid under the social insurance of the Member concerned, would maintain rights in course of acquisition.

The amendment was intended to include not only periods during which an old-age, invalidity, or widow's or orphan's pension was paid under the insurance scheme of one or more countries, but also periods during which any benefit was paid by another branch of insurance, e.g. the accident insurance scheme of any of the countries.

This amendment was adopted by 29 votes, without opposition, after it had been slightly changed by the insertion of the words " adopting the scheme " after the words "other Member " and " another Member ".

The Office text as thus amended and enlarged was adopted by 34 votes, without opposition.

5. *Totalisation for reckoning qualifying period*

Totalisation is also effected for the purpose of reckoning the qualifying period or the number of contributions prescribed for entitlement to special benefits. Each insurance institution which has to decide whether the qualifying period or a special condition for entitlement to special benefits is fulfilled, counts not only periods spent under its own law, but also those spent under the laws of other Members adopting the international scheme.

Here again, the principle of totalisation for the purpose of reckoning the qualifying period was laid down in the first place, and then the periods to be counted were defined. The Office had proposed the following text :

5. For the purpose of reckoning the qualifying period (minimum duration of liability to insurance) or the number of contributions prescribed for entitlement to special benefits (guaranteed minimum pensions) as against each of the insurance institutions concerned, totalisation of :

(a) contribution periods ;

(b) and also periods in respect of which contributions are not payable but which are counted for the purpose of reckoning the qualifying period or the prescribed number of contributions, under the law of at least one of the institutions concerned.

By 34 votes, without opposition, the Committee accepted the proposal of an Employers' member to the effect that paragraph *(b)* should be drafted in the same form as that which had already been accepted for paragraph *(b)* of point 4.

An amendment to delete paragraph *(b)* (1) having been withdrawn, the definitive text of point 5, as established by the Committee, was therefore as follows :

5. For the purpose of reckoning the qualifying period (minimum duration of liability to insurance) or the number of contributions prescribed for entitlement to special benefits (guaranteed minimum pensions) as against each of the insurance institutions concerned, totalisation of :

(a) contribution periods ;

(b) and also periods in respect of which contributions are not payable, but which are counted for the purpose of reckoning the qualifying period or the prescribed number of contributions :

(1) either under the law of at least one of the institutions concerned ;

(2) or under the law of the particular institution concerned.

6. *Occupational insurance schemes*

In many countries there exist special insurance schemes set up on behalf either of persons employed in certain occupations, such as miners and seamen, or of certain social classes, such as salaried employees or intellectual workers. Under these insurance schemes more valuable benefits are provided for, but also higher contributions, than under the general scheme. The transfer from a general to a special scheme should not have the effect of injuring the latter. If workers insured successively under a general scheme and under a special scheme were able to have credited to them the time spent by them under the general scheme at its face value, they would be better treated than persons who had been continuously insured under the special scheme. Here, therefore, there arises a question of equity on the national plane as well as on the international plane.

In order to ascertain whether the totalisation principle should not be modified where the right to pension, or to certain special benefits, is subject to the condition that all periods of insurance must have been spent in an occupation covered by a special insurance scheme, the Office had proposed the following text :

6. Occupational insurance schemes.

Restriction where the national law of one of the Members subjects the award of benefits to the condition that all the periods must have been spent in an occupation covered by a special scheme of insurance (e.g salaried employees' insurance, miners' insurance) :

For the purpose of reckoning the qualifying period or the prescribed number of contributions, only those periods spent under the corresponding special scheme or schemes of the other Member or Members are totalised.

The first amendment to this point was to the effect that the word "all" should be deleted from the Office text : it was adopted by 30 votes, without opposition.

Another amendment, which was intended to secure that migrants transferring from a general scheme to a special scheme should obtain benefits at least equal to those of the general scheme, was not accepted by the Committee.

The Committee then adopted, by 32 votes without opposition, the Office text, with the omission of the word "all".

In connection with the occupational insurance schemes, mention must be made of the following amendment which was moved by a Government Member :

Where in any country there does not exist a special scheme for a given occupation, periods spent in that occupation under a non-corresponding scheme are totalised for the purpose of reckoning the qualifying period.

In the course of the discussion, another Government member suggested that the word "are" should be replaced by the words "shall or may be".

With this modification the Committee adopted the amendment by 28 votes, without opposition. The amendment as adopted read therefore as follows :

6 *a*. Where in any country there does not exist a special scheme for a given occupation, periods spent in that occupation under a non-corresponding scheme shall or may be totalised for the purpose of reckoning the qualifying period

7. *Totalisation for the purpose of recovery of rights, and right to enter voluntary insurance*

Those laws which only maintain the validity of contributions during a certain term generally afford the person who has dropped out of insurance an opportunity to recover his rights which have lapsed : the payment of fresh contributions

will restore those rights. It is only just that the totalisation of insurance periods should also operate for the purpose of the recovery of rights which have lapsed.

Entry into voluntary insurance is, as a rule, only allowed if the applicant can prove that he has paid a prescribed minimum number of contributions in virtue of compulsory insurance. This precaution is intended to prevent the entry of persons who neither have been nor are normally occupied as wage earners. It would, however, be unjust to exclude from voluntary insurance migrant workers who have perhaps been insured for many years in the country of emigration. For this reason the totalisation of insurance periods is to be recommended also for the purpose of determining the right to enter voluntary insurance. The Office had proposed the following text :

7. Application of the rules indicated in points 5 and 6 to other implications of insurance, in particular to :

(a) recovery of rights ;

(b) right to enter voluntary insurance.

The Committee adopted this text by 28 votes, without opposition.

8. *Reckoning of concurrent periods*

Insurance periods spent simultaneously in two or more countries should only count once for the purpose of totalisation. But for this rule a migrant could complete the qualifying period more quickly than other insured persons.

The Committee adopted, by 31 votes without opposition, the Office text :

8. Reckoning of concurrent periods :

Contribution periods and assimilated periods spent simultaneously in two or more States Members are reckoned once only for the purpose of totalisation.

9. *Disregard of short periods*

Certain treaties only take account, for the purpose of totalisation, of periods exceeding a prescribed minimum duration with the same institution or with several institutions in the same country. This restriction is imposed only for reasons of administrative convenience. The Office referred to this practice in the following terms :

9. Disregard of short periods :

For the purpose of totalisation, periods spent with a particular insurance institution are counted only if they exceed a minimum duration (e.g. 150 contribution days or 26 contribution weeks).

Three amendments were submitted.

The first proposed that the figures in the example given in the Office text should be reduced by half.

The second, which, like the first, was submitted by a Government member, was to the effect that the words " taken together " should be inserted after the word " if ". The Committee adopted this amendment by 24 votes to 1.

The object of the third amendment was to substitute for the words " with a particular insurance institution " the words " under a particular scheme of invalidity, old-age, and widows' and orphans' insurance ".

This amendment led to the proposal that the words " or solely with a particular institution " should be added to it.

These amendments were all accepted by the Committee, so that the definitive text read as follows :

9 Disregard of short periods :

For the purpose of totalisation, periods spent under a particular scheme of invalidity, old-age, and widows' and orphans' insurance, or solely with a particular institution, are counted only if, taken together, they exceed a minimum duration (e g 75 contribution days or 13 contribution weeks).

C. *Determination of Benefit Liability of Each Insurance Institution*

10. *Appraisal by each institution of rights of claimant*

Each insurance institution which has received contributions in respect of the migrant determines only under its own law whether the claimant, account being taken of all insurance periods, satisfies the prescribed qualifying conditions. The method of maintenance of rights proposed by the Office is characterised by the rule that each institution, while totalising the insurance periods, nevertheless applies its own law only.

The Office had proposed the following text :

10. Appraisal by each insurance institution of the rights of the claimant :

Each institution, while totalising the periods to be counted, determines only under its own law whether the claimant satisfies the prescribed qualifying conditions.

This text did not give rise to any discussion and was adopted by 21 votes without opposition.

11. *Benefits for which each institution is liable*

Each insurance institution with respect to which the migrant fulfils the qualifying conditions prescribed by its law calculates according to that law the benefit due ; in doing so it takes into account only periods [illegible] the migrant has spent with it.

If all the benefit components varied with the contributions paid to this or that institution, the rule just formulated would result in a fair distribution of the liability for benefits among the institutions concerned. This rule, however, is no longer adequate where any of the institutions provide benefits, or benefit components, which are fixed independently of the number and amount of the contributions paid. In order to reach an arrangement which is at once equitable for the migrants and acceptable for the remainder of the insured, it is necessary to treat the fixed benefits in the same way as benefits which vary with the time spent in insurance. In other words, each institution must be authorised to pay only such fraction of any benefit or benefit component which is determined independently of the time spent in insurance as corresponds to the ratio of the insurance periods spent under its law to the total of the insurance periods spent under the laws of all the institutions concerned.

The Office had proposed the following text:

11. Liability of each insurance institution for benefit proportional to the contributions paid to it.

(a) Benefits varying with the time spent in insurance:

Each institution, with respect to which the claimant satisfies the qualifying conditions, determines the amount due under its own law, having regard only to periods which have been spent under this law and are counted for the purpose of reckoning benefits.

(b) Benefits determined independently of the time spent in insurance:

In this case only such fraction of the benefits, or benefit components, determined independently both of the number and of the amount of the contributions paid (save the qualifying contributions), is due as corresponds to the ratio of the contribution periods spent under the law of the institution to the total of the periods counted for the purpose of reckoning benefits.

(Examples of benefits, or benefit components, determined independently of the number and amount of contributions: pensions the rate of which is the same for all pensioners, fixed sums or basic amounts determined independently of the time spent in insurance, fixed supplements, guaranteed minimum pensions or allowances.)

An Employers' member asked for the deletion from the introductory sentence of the Office text of the words "proportional to the contributions paid to it" so that the commencement of point 11 would read as follows:

Liability of each insurance institution for benefit reckoned as follows:

This new text, which had the advantage of not prejudging at the outset the method of reckoning, was adopted by 37 votes without opposition.

A Government member proposed the inclusion of the words " (benefit components) " in paragraphs *(a)* and *(b)* after the word " Benefits ". This proposal was adopted without discussion or opposition.

Two amendments put down by Government members dealt with the distinction between contribution periods and periods counted for the purpose of reckoning benefits ; the latter include both contribution periods and assimilated periods. The authors of these amendments explained that the rules indicated in point 11 might lead to two different results according as the calculation was based on contribution periods or on periods counted for the purpose of reckoning benefits, and that it was important not to make use of both these factors simultaneously.

These two amendments were combined together in the following text :

> In point 11 *(b)* substitute for the paragraph :
>
> " In this case . . for the purpose of reckoning benefits ",
>
> the following text ·
>
> In this case only such fraction of the benefits, or benefit components, determined independently of the time spent in insurance (save the qualifying period), is due as corresponds to the ratio :
>
> (1) either of the periods counted for the purpose of reckoning benefits under the law of the institution to the total of the periods counted for the purpose of reckoning benefits ;
>
> (2) or of the contribution periods spent under the law of the institution to the total of the contribution periods spent under the laws of all the institutions concerned

This amendment was adopted by 30 votes without opposition.

A Workers' member proposed the addition of a new clause to read as follows :

> In no case shall the benefit received by the migrant be less than that usually given by the insurance institution concerned.

In support of this amendment, its mover explained that it was necessary that the migrant should receive in the last country in which he resided benefits corresponding to all the contributions which he had paid in that country and in previous countries in which he had been insured.

The Committee thought that it would be difficult to go beyond the terms of the protective clause analysed in point 15 of the Office text, and therefore rejected the amendment.

A Government member referred to those laws in which the whole of the benefit varied with the time spent in insurance and which included no fixed components ; in such cases a certain fraction of the benefit ought to be treated to some extent

like a fixed component which became payable immediately after the qualifying period was completed.

The Committee agreed with the suggestion of the Office that the list of points ought not to be overloaded by reference to cases of this kind, and that it should be for the Governments to refer to them in the course of their replies to the Questionnaire.

The whole of the text of point 11 was adopted by 30 votes without opposition in the following terms, in accordance with the amendments which had been adopted :

11. Liability of each insurance institution for benefit reckoned as follows :

(a) Benefits (benefit components) varying with the time spent in insurance :

Each institution with respect to which the claimant satisfies the qualifying conditions determines the amount due under its own law, having regard only to periods counted for the purpose of reckoning benefits under this law.

(b) Benefits (benefit components) determined independently of the time spent in insurance :

In this case only such fraction of the benefits, or benefit components, determined independently of the time spent in insurance (save the qualifying period), is due as corresponds to the ratio :

(1) either of the periods counted for the purpose of reckoning benefits under the law of the institution to the total of the periods counted for the purpose of reckoning benefits under the laws of all the institutions concerned ;

(2) or of the contribution periods spent under the law of the institution to the total of the contribution periods spent under the laws of all the insurance institutions concerned.

(Examples of benefits, or benefit components, determined independently of the number and amount of contributions : pensions the rate of which is the same for all pensioners, fixed sums or basic amounts determined independently of the time spent in insurance, fixed supplements, guaranteed minimum pensions or allowances.)

A Government member pointed out that some addition ought to be made to the rules which had been adopted to meet the case where the pension was reckoned on the basis of wages. When reckoning benefits each institution might take as basis either the wages received abroad (a solution which it would appear very difficult to apply), or the wages which the worker would have received if he had remained in the country of the institution, or the wages which he actually received while in the country which grants the pension.

The Committee considered that this observation ought to be mentioned incidentally in the Questionnaire which would be transmitted to the Governments.

An Employers' member proposed that they should recognise, besides the method which consists in maintaining in each country the rights in course of acquisition, the method of transfer of capital representing rights in course of acquisition. His amendment read as follows :

Transfer of capital representing rights in course of acquisition at the date of the departure of the insured person to the insurance institution which would thenceforward be responsible for the insured person.

The Office explained that the method of transfer of capital representing rights in course of acquisition gave rise in practice to difficulties of an actuarial and financial character. This method was practicable in certain cases but would meet with insuperable obstacles if an endeavour were made to apply it generally. This indeed was the conclusion reached from the replies of the great majority of Governments when they were previously consulted on the choice of the method of maintaining rights to be adopted. In view of these explanations, the amendment was withdrawn by its mover.

12. *Subsidies, supplements, or allowances payable out of public funds*

A contribution from the public authorities is provided for under almost all insurance schemes covering employed persons in general or manual workers.

In so far as the contribution of the public authorities takes the form of supplements proportional to the contributions paid in respect of each insured person, no difficulty arises ; each country reckons the supplements for which it is liable in proportion to the number and the amount of the contributions paid under its law. Where the subsidies or supplements are determined independently of the time spent in insurance, the question arises as to the way in which the reduction rule indicated in point 11 is to be applied.

The Office had proposed the following text :

12. Application of rules indicated in point 11 *(a)* and *(b)* to subsidies, supplements or allowances which are wholly or mainly payable out of public funds.

This text was adopted by 34 votes without opposition.

13. *Application of the reduction rule where only one institution is liable for benefit*

The reduction rule applies normally where the insurance institutions of two or more countries are simultaneously required to pay their share of the pension to a migrant. In order to ascertain whether the rule would also apply where

the claimant is entitled to benefit from one institution only, the Office had proposed the following text:

13. Application of rule indicated in point 11 *(b)* in cases where the claimant is entitled to benefit from only one insurance institution:

(a) even where periods of insurance are totalised;

(b) without totalising, but simply under the law of the institution.

After some discussion it was decided to vote separately on each of the two paragraphs. Paragraph *(a)* was adopted by 36 votes without opposition and paragraph *(b)* was rejected by 18 votes to 13.

The definitive text is therefore as follows:

13. Application of rule indicated in point 11 *(b)* in cases where the claimant is entitled to benefit from only one insurance institution even where periods are totalised.

13 *(a)*.

In order to supplement the text of point 13 as adopted by the Committee, a Government member proposed to insert a new point, which would read as follows:

Power of the last institution with which the insured person is insured not to apply reduction according to the rule indicated in point 11 *(b)* where, on the happening of the event insured against, the person concerned is entitled to the maximum pension, in virtue of those periods only which he has spent with that institution.

The mover of the amendment pointed out that the reduction rule indicated in point 11 *(b)* might operate to the disadvantage of the migrant in those countries where they would be entitled by the mere application of the law of the country to the full pension. It would therefore be desirable to consult the Governments on this case so as to obtain the opinion of those countries especially in which benefits are payable at a flat rate.

The amendment was adopted without opposition.

14. *Non-application of reduction rule to short periods spent with a particular institution*

The majority of bilateral treaties dispense from all liability those insurance institutions with which the migrant has only spent altogether a very short period of insurance. In order that the migrant's interests should not be injured, it is at the same time stipulated that no reduction of benefit shall be effected by one insurance institution in respect of short periods spent with another institution.

This twofold rule saves the migrant from any loss, since the periods which do not count towards benefits from one

institution are taken into account by the other. There exist, however, treaties which dispense from all liability an institution with which only a very short total period of insurance has been spent, although they allow the reduction of liability in respect of the same period.

The Office had proposed the following text :

14. Non-application of rule indicated in point 11 *(b)* to periods spent with a particular insurance institution which are less than a minimum (e g. 300 contribution days or 52 contribution weeks), the institution not being liable for any benefit.

An Employers' member had proposed that the Office text should be re-drafted as follows :

14. Non-application of rule indicated in point 11 *(b)* to periods spent under a particular scheme of invalidity, old-age, and widows' and orphans' insurance, or only with a particular institution, which, taken together, are less than a minimum (e.g. 300 contribution days or 52 contribution weeks), the institutions concerned not being liable for any benefit.

This amendment was adopted by 33 votes without opposition.

The same Employers' member proposed the insertion of a new point reading as follows :

In the case referred to in point 14, the reduction provided for under point 11 *(b)* will be effected on the following basis :

either *(a)* on the basis of all the insurance periods (including those disregarded under point 14).

or else *(b)* on the basis of those insurance periods not disregarded under point 14.

The Office pointed out that point 14 having been adopted, the Governments would in any case be consulted on the question whether, if the first institution was dispensed from all liability, the second should or should not accept liability for benefits corresponding to periods spent with the first institution.

In consequence of this explanation the amendment was withdrawn.

15. *Protective clause*

The majority of bilateral treaties guarantee to their beneficiaries who are entitled to benefits in two countries a joint benefit equal to the benefit which they would have obtained, in the absence of the treaty, in respect of the periods spent with a particular institution. The institution which would otherwise have profited by the reduction of the benefits which it is liable is made responsible for this guarantee.

This protective clause would need to be amplified to meet the case where three or more institutions would be concerned in its application.

The Office had proposed the following text :

15. Protective clause :

(a) A beneficiary entitled to benefits in at least two countries to be guaranteed total benefit equal to the benefit which he would obtain in respect only of the periods spent with a particular insurance institution ;

(b) this institution to be liable for any complementary benefit due as the result of the operation of the guarantee ;

(c) this complementary benefit to be reckoned, where several institutions are concerned, according to the amount of the highest complementary benefit which would be due from any one of the institutions, and the liability for it to be distributed among them in proportion to the complementary benefit which would have been due from each individually.

A Workers' member moved an amendment for the purpose of making the last institution with which the migrant is insured responsible for the application of the protective clause. The Committee decided to adjourn the vote on this amendment after it had been understood that a consultation should take place between its author and the Office experts with a view to examining whether the object of the amendment could not be secured by modifying points 18 and 34. As the result of this consultation the necessary modifications were made in these points and the author did not ask for a vote on his amendment to point 15.

A Government member pointed out that the complementary benefit due under the protective clause might be calculated, where several institutions were concerned, in a different manner from that indicated in paragraph *(c)* of the Office text. The Office admitted the truth of this observation, but stated that the Governments would be able, in their replies, to suggest other means of calculating the complementary benefit.

The Office text was adopted by 34 votes, without opposition.

16. *Maximum limit for total benefit*

Corresponding to the protective clause which serves the interests of migrants, there has been introduced into several bilateral treaties a clause operating to protect the interests of the insurance institutions : the total of the benefits awarded to the migrant may be limited to the amount of the benefit which would be due from the institution having the law which would be most favourable to him as regards the calculation of the benefits if he had spent his entire insurance

career with this institution. If this sum is less than the total of the shares of benefit, a proportional reduction of each share is to be effected.

The Office had proposed the following text :

16. Maximum limit for total benefit :

(*a*) Power to limit the total benefit awarded by the insurance institutions of two or more countries to the amount of the benefit which would be due from the institution having the most favourable law on the basis of all the periods which are to be counted ;

(*b*) Any reduction to be effected proportionally on each portion of the benefit.

This text was adopted by 35 votes, without opposition.

17. *Medical treatment and care*

Several bilateral treaties contain clauses dealing with the right of migrants to medical care ; if and in so far as there exists under such a scheme a right to medical benefit, reference is to be made to the total of the insurance periods for the purpose of ascertaining whether the right has been acquired. Medical treatment is administered to the migrant by the institution with which he was last insured, or by the institution of his last place of residence, and the cost is either borne by the institution as just defined, or else shared by all the institutions to which the migrant has successively been affiliated.

The Office had proposed the following text :

17. Medical treatment and care :

(*a*) Desirability of charging the insurance institution of the place of residence with the provision, for persons who on the ground of invalidity would be entitled to claim a pension, of treatment and care for the purpose of preventing, postponing, alleviating or curing invalidity.

(*b*) Rules for contribution by other institutions concerned towards the cost of treatment and care.

This text was adopted by 37 votes, without opposition.

D. *Arrangements for paying Benefits*

18. *Submission of claims for benefit*

In order to enable migrants more easily to enforce their rights, several treaties authorise them to submit their claims for benefit to one only of the insurance institutions concerned ; in the absence of such an authorisation, migrants are obliged to submit their claims to each institution separately. This

facility is a valuable privilege for migrants and the Office had referred to it in the following terms:

18. Submission of claims for benefit:

(a) either to only one of the insurance institutions concerned, which informs all the others mentioned in the claim;

(b) or severally to each institution concerned.

A Government member brought in an amendment to the effect that the international scheme would be applicable even where the migrant did not request that it should be. The Office explained that the international scheme would be applicable *ipso jure*. After this explanation, the amendment was withdrawn.

A second amendment was prepared by a Workers' member with the object of substituting for paragraph *(a)* the following text:

(a) to only the insurance institution of the place of residence, which informs all the others concerned in the claim.

In agreement with the Office experts, the mover, having modified his previous proposal, asked that there should be added in paragraph *(a)* of the Office text after the word "concerned" the following words:

(and in particular to the insurance institution of the place of residence)

This amendment was adopted and the whole of point 18 as thus modified was adopted without opposition.

19. *Rate of exchange*

In calculating the rate of the benefit for which it is liable, an insurance institution may have to take account of the benefit for which the institutions of other countries are liable. In order to place these calculations on a sure basis, the conditions of the conversion must be precisely stipulated. The Office proposed the following text:

19. Rate of exchange:

When a sum has to be calculated in terms of the currency of another Member, it is converted according to the relation between the two currencies in the foreign exchange market of the capital of the Member in whose currency it is expressed.

This text was adopted by 34 votes after an Employers' member had pointed out that it would be necessary to refer in the Questionnaire to the date at which the rate of exchange is to be ascertained.

20. *Provisional benefit*

The determination of the benefit due to migrants may, however expeditious the treatment of the claim by the insurance institutions, be delayed, and the beneficiary may thereby suffer hardship. For this reason, several treaties require an insurance institution which is liable to pay a pension in virtue merely of insurance periods spent under its own law to grant provisional benefit. The Office had proposed the following text :

20. Provisional benefit :

Pending final settlement, grant of provisional benefit by an insurance institution liable to pay a pension in virtue only of insurance periods spent under its own law

A Workers' member submitted an amendment for the purpose of deleting the words :

in virtue only of insurance periods spent under its own law.

In the opinion of the mover of this amendment, the Office text might encourage certain institutions to reduce the benefits which they would have to award.

A Government member proposed a new draft of point 20 which would take into account the observations of the Workers' member :

20. Provisional benefit

Pending final settlement, grant by an insurance institution of provisional benefit of an amount at least equal to that payable in virtue only of insurance periods spent under its own law.

This new draft was adopted by 36 votes, without opposition.

E. *Optional Provisions*

21. *Discharge of liability by transfer of capital representing rights in course of acquisition*

The method employed by almost all bilateral treaties secures the maintenance by each country of rights in course of acquisition without any transfer of funds or settlement of accounts between the insurance institutions of the countries in which the migrant has been successively insured. It would seem that the international scheme for the maintenance of rights should be based on the same method.

In certain cases, however, insurance institutions may prefer to discharge their liability at the departure of the migrant, by the payment of the capital representing his rights in course of acquisition. It does not seem that there is any serious reason

why the immediate discharge of liability by the transfer of the capital representing the rights in course of acquisition should not be recognised.

The Office had proposed the following text :

21. Discharge of liability by transfer of capital representing rights in course of acquisition :
Power of an insurance institution to discharge its liability to the insured person or his dependants by paying to the insurance institution which is thenceforward responsible for the insured person, subject to the latter institution's acceptance, the capital representing the rights in course of acquisition at the date of the departure of the insured person.

A Government member proposed that point 21 should be omitted altogether.

The Office explained that the difficulties which prevented the general application of the method of transfer of capital did not arise if the method was to be employed optionally, by agreement between the institutions concerned.

After these explanations, the amendment was withdrawn and the Office text was adopted by 28 votes, without opposition.

21 *(a) Power of Members by agreement to depart from rules of point* 11

A Government member proposed the insertion of a new point which read as follows :

21 *(a)*. Power of Members, in agreement with one another, to depart from the rules indicated in point 11, for the purpose of reckoning the benefits for which each institution is liable, taking into consideration in particular the periods counted for the purpose of reckoning benefits under the law of each institution.

In support of his proposal, its mover observed that the rules indicated in point 11 were not entirely satisfactory, since they did not take account of the date at which the contributions were paid to the various institutions concerned. In any situation in which the process of capitalisation is concerned, it is necessary to define every debit and credit, not only by its amount, but also by the date at which the operation was effected.

The rules indicated in point 11 provide the simplest solution, which, in spite of its empirical character, represents an acceptable approximation. Nevertheless, other rules, representing a solution midway between that of point 11 and a solution based on purely actuarial principles, might receive consideration. The adoption of the amendment proposed would have the advantage of encouraging the search for solutions of this kind.

The Committee, impressed with this argument, adopted the amendment by 22 votes, without opposition.

III. — Maintenance of Acquired Rights

The rights acquired under schemes of invalidity, old-age, and widows' and orphans' insurance should be maintained as long as their possessors fulfil the prescribed qualifying conditions, and pensions once awarded should continue to be paid as long as the consequences of the event giving rise to benefit persist. A fair number of laws, however, terminate the payment of certain benefits in spite of the continuance of the circumstances in which they were awarded. Thus, it frequently happens that pensioners who take up their residence abroad are faced with the condition of residence which makes the continued receipt of the pension dependent on residence in the country in which the institution liable for the pension is established.

This condition differs in its application from one country to another. Thus, it may be applied to all pensioners irrespective of nationality or only to foreign pensioners. In both cases it is felt most severely by migrants who are obliged to return to their country of origin or who desire to do so, this desire being natural in the case of persons who are elderly or have lost their breadwinner.

The condition of residence may be compulsorily applicable, so that non-residence in the country in which the insurance institution is established necessarily results in loss of all rights; or its application may be optional, the insurance institution being free to use its discretion in the treatment of non-residents.

Certain laws, though laying down a condition of residence, allow a pensioner residing abroad to continue to receive his benefit if he has been authorised by the insurance institution concerned to reside abroad. Other laws are stricter, and impose serious restrictions on pensioners who remove their residence to a foreign country: commutation of the pension for a lump sum smaller than the capitalised value of the pension, suspension of subsidies or supplements payable out of public funds, total suspension of the pension.

The reasons for these restrictions are to be found in the practical difficulty and cost of effecting periodical payments abroad, in the effect of these payments on the trade balance of the country in which the institution liable for the pension is established, and in the difficulty of verifying the continuance of the circumstances in respect of which the pension is awarded.

In the course of recent years a fair number of bilateral treaties have been concluded for the purpose of abolishing the condition of residence as between the contracting countries.

or at least limiting its application. Thus, the condition of residence is abolished in these treaties :

(a) either on behalf of nationals of the contracting countries, while residing in one or other of these countries ;

(b) or on behalf of all persons entitled to pensions, irrespective of nationality, while residing in one or other of the contracting countries :

(c) or on behalf of the nationals of the contracting countries, but irrespective of the country in which they reside.

These bilateral treaties are based on the principle of the maintenance of acquired rights, although they impose some restrictions on its application. Nevertheless, they indicate the way that should be followed in order to arrive at a general international scheme based on the recognition, without any restriction, of the principle of the maintenance of acquired rights under invalidity, old-age, and widows' and orphans' insurance.

A. *Beneficiaries under International Scheme*

22. *Residence of beneficiaries*

The international scheme for the maintenance of rights may be applied either to all beneficiaries, wherever their place of residence may be, or only to beneficiaries resident in the territory of a Member adopting the scheme.

The Office suggested the following text :

22. Residence of beneficiaries :

Application of scheme :

(a) either to all beneficiaries, irrespective of their place of residence ;

(b) or only to beneficiaries resident in the territory of a Member adopting the scheme.

This text was adopted by 34 votes, without opposition.

23. *Nationality of beneficiaries*

Some bilateral treaties only abolish the residence condition in so far as the nationals of the contracting countries are concerned, while in other bilateral arrangements this privilege has been extended to all pensioners, irrespective of their nationality.

The Office proposed the following text :

23. Nationality of beneficiaries.

Application of scheme :

(*a*) either to all beneficiaries, irrespective of nationality ;

(*b*) or only to beneficiaries who are nationals of Members adopting the scheme.

A Government member submitted an amendment for the addition of a paragraph (*c*) as follows :

(*c*) or, if paragraph (*b*) is adopted, also to all persons without nationality

This amendment, identical with that inserted in point 3, was adopted by 37 votes, without opposition.

B. *Purposes of International Scheme*

23 (*a*). *Principle of equality of treatment of nationals and foreign beneficiaries under the scheme*

Three Government members proposed the insertion of a point 23 (*a*) before point 24, as follows :

23 (*a*). Application, with respect to the beneficiaries under the international scheme, of the principle of equality of treatment with nationals in the matter of rights to insurance benefits.

The authors of the amendment [illegible] that the benefi-ciaries under the scheme would, in the [illegible] of cases [illegible] be aliens, that in a considerable [illegible] aliens to benefit under national [illegible] which are frequently of a [illegible] sequence, the maintenance [illegible] future international Conve[illegible] of the equality of treatme[illegible] under the scheme. It is [illegible] of the equality of trea[illegible] be found in the 1933 C[illegible] and widows' and or[illegible] is incomplete as [illegible] resident outside th[illegible] for the pension is [illegible] incompatibility [illegible] Convention [illegible] probable th[illegible] adopted in [illegible] question [illegible] establishing [illegible] tenance of [illegible]

In reply to these arguments it was pointed out that the question on the Agenda referred to the maintenance of rights, while the amendment tended, to a large extent, not only to maintain acquired rights, but to set up new rights to benefit or portions of benefit which the foreigner did not receive even if resident in the country where the institution liable for the pension is established. Moreover, since the question of equality of treatment of nationals and foreigners had been already settled by the Conventions of 1933 on invalidity, old-age and widows' and orphans' insurance, there might be a risk, if the discussion were reopened, of arriving in 1935 at a solution which would perhaps be different from that adopted in 1933.

On being put to the vote, the amendment obtained 13 votes to 13, and in consequence was not adopted.

24. *Maintenance of the different portions of benefits*

In order to allow the Governments to state their views respecting the application of the principle of the maintenance of acquired rights to the various portions of benefit, the Office proposed the following text:

24. Application of scheme:

(a) either to the entirety of the benefits, the rights to which have been acquired;

(b) or only to benefits other than subsidies, supplements or allowances which are payable wholly or mainly out of public funds.

This text was adopted without discussion by 22 votes, without opposition.

25. *Subsidies, supplements or allowances payable out of public funds*

The national laws, and even several bilateral treaties which guarantee the payment of pensions abroad, often make reservations as regards the maintenance of subsidies, supplements or fractions of pensions payable out of public funds, and provide that such portions of pensions shall not be paid to beneficiaries residing abroad.

The Office proposed the following text:

25. Subsidies, supplements or allowances which are payable wholly or mainly out of public funds, to be granted:

(a) either to all persons, irrespective of nationality;

(b) or only to nationals of Members adopting the scheme.

This text was adopted by 22 votes without opposition, with the addition of a paragraph (*c*), identical to that inserted in point 23 :

> (*c*) or, if paragraph (*b*) is adopted, also to all persons without nationality.

26. *Restrictions on commutation of pensions*

Certain laws provide that pension liability may be discharged by the payment of a lump sum where the claimant transfers his residence abroad ; such a settlement by commutation is prejudicial to the interests of the migrants, whenever the payment which he receives is smaller than the capitalised value of the pension.

In order to give the Governments an opportunity to state their views respecting the limits to be placed on this possible method of settlement by commutation, the Office proposed the following text :

> 26. Restriction on commutation of pensions for lump sum :
>
> Non-application to beneficiaries under the scheme, while resident in the territory of any other Member adopting the scheme, of any provisions of national law for the commutation of pensions for lump sums in case of residence abroad.

This text was adopted by 22 votes, without opposition.

C. *Arrangement for Paying Benefits*

The formalities laid down by the national law of a country in connection with the payment of insurance benefits outside its territory — for example, the notification of the place of residence abroad to the insurance institution, and periodical proof that the beneficiary is alive — should likewise apply to beneficiaries under the international scheme to be established. The bilateral treaties, indeed, expressly provide that the provisions of national law as to the formalities to be fulfilled by beneficiaries are not affected.

27. *Medium of payment*

The fact that the pensioner resides abroad does not modify the obligations of the institution liable for the pension in the matter of the law under which payment is to be effected. Each insurance institution grants benefit in the ordinary way within the limits of its territory, and in the currency of its country. Subject to any arrangements which may be made to facilitate payment abroad, the institution is not obliged to effect payment otherwise than in its national currency.

The Office proposed the following text :

27. Medium of payment.

Power of an insurance institution liable to pay benefit to discharge its liability to the person entitled to benefit in the currency of its own country.

This text was adopted by 27 votes, without discussion or opposition.

28. *Commutation of small pensions*

The payment of small pensions abroad involves relatively considerable expense.

Hence several bilateral treaties incorporate a provision, found in certain national laws, to the effect that the insurance institution liable for the pension shall have the option of commuting for a lump sum, to be calculated according to actuarial rules, those pensions the monthly instalments of which do not reach a certain prescribed minimum.

The Office proposed the following text :

28. Commutation of small pensions :

Power of an insurance institution liable to pay benefit to commute for a lump sum, to be calculated according to the provisions applicable to the institution, a pension the monthly rate of which does not reach a certain minimum (e.g. 5 gold francs).

A Government member proposed the deletion of the example referring to 5 gold francs, since this sum might be too high in countries with a depreciated currency and too low in countries with an appreciated currency, and thus an absolute figure would give widely differing results according to the country concerned.

Another Government member observed that point 28 dealt with a twofold problem : commutation by each institution of the partial pension, the monthly rate of which does not reach a certain specified minimum, and commutation of the total pension due by all the institutions when its rate does not reach a certain specified minimum.

The Committee decided to delete the example of 5 gold francs and to add the following to point 28 :

Special minimum in case of payment of two or more partial pensions.

Point 28 thus amended was adopted by 27 votes, without opposition.

29. *Provision for reduction and suspension*

In principle the benefits payable in virtue of compulsory insurance are awarded as a strict legal right. Numerous

laws, however, restrict the application of this principle to the extent that the payment of benefit may be suspended, in whole or in part, as long as the pensioner is in receipt of another benefit payable in virtue of any law concerning compulsory social insurance or workmen's compensation for accidents or occupational diseases.

These provisions, which prevent or restrict the possibility of concurrent benefits, are defended on the ground that it is not the function of social insurance to provide benefits of a total amount greater than the loss suffered by the insured person or his dependants.

The bilateral treaties concluded between countries the laws of which embody such provision for reduction or suspension stipulate that these restrictions shall operate in the case of pensioners even in respect of benefits payable by an insurance institution of the other contracting country.

The Office proposed the following text :

29. Provision for reduction and suspension :

The provisions of the national law of a Member for the reduction or suspension of benefit in case of concurrent rights to other social insurance benefits or in case of exercise of an employment involving compulsory insurance apply to beneficiaries, even as regards benefit due from an insurance institution established in the territory of any other Member adopting the scheme and as regards the exercise of an employment in such territory.

This text was adopted by 27 votes, without opposition.

IV. — Mutual Assistance in Administration

30. *Principle of mutual assistance*

This principle is laid down in all the bilateral treaties. It entails on the administrative authorities and insurance institutions of the contracting countries the duty of lending one another assistance, just as they would in applying their own insurance laws. This principle concerns insurance institutions on the one hand, and the administrative and judicial authorities on the other, whether such authorities are of a specialised or of a general character, but in the latter case only in so far as they participate in the administration of insurance legislation.

The Office proposed the following text :

30. The authorities and the social insurance institutions of Members adopting the scheme to afford one another assistance to the same extent as they do in applying their own social insurance legislation.

A Workers' member submitted an amendment which, after modification by its author in the course of the debate, added the following new clause to point 30 :

Consultation with appropriate workers' organisation or organisations concerning any decision come to under the proposed Convention.

The author of the amendment explained that the application of the international scheme for the maintenance of rights might create difficulties, that the beneficiaries would not always be in a position to understand exactly the nature of their rights, and that it would be essential to make provision for the co-operation of the workers' organisations, whose duty it is in this matter, as in so many other respects, to protect the interests of the workers.

Several Government members, and one Employers' member, pointed out that the workers, acting through their representatives, already take part in most countries in the management of insurance institutions, that such institutions are subject to the supervision of the State, and in this manner the rights of the insured persons are fully safeguarded ; there was thus no necessity for the co-operation of the workers' organisations any more than that of the employers' organisations.

The amendment was rejected by 17 votes to 14. Subsequently, the Office text was adopted by 26 votes, without opposition.

31. *Investigations*

Certain administrative formalities must inevitably be fulfilled by mutual assistance : e.g. investigations and medical examinations, which are necessary for determining whether the beneficiaries continue to satisfy the conditions for entitlement to benefit.

The Office proposed the following text :

31. Investigations :

Mutual assistance to include the necessary investigations and medical examinations, requested by an insurance institution of any other Member adopting the scheme, for the purpose of determining whether the persons in receipt of benefits for which this institution is liable satisfy the qualifying conditions.

This text was adopted by 32 votes without opposition.

32. *Expenses of mutual assistance*

The Office proposed the following text :

32. Expenses of mutual assistance :

Rules for the repayment of expenses of mutual assistance :

(a) determination of the sum to be repaid according to the scale of the insurance institution or authority which affords assistance or, in the absence of a scale, repayment of the actual expenditure incurred ;

(b) date of repayment.

This text was adopted by 32 votes without opposition.

33. *Exemption from taxation.*

The Office proposed the following text :

33. Exemption from taxation :

The privilege of exemption from taxation accorded for documents submitted to the authorities or insurance institutions of one Member to be extended to the corresponding documents submitted in connection with the administration of the scheme to the authorities and institutions of any other Member adopting the scheme.

This text was adopted by 32 votes, without opposition.

34. *Administration of benefits by institution of place of residence of beneficiary*

The majority of bilateral treaties provide for a special form of mutual assistance for the purpose of effecting payment of benefits ; the institution which is liable for the pension may, at its expense, empower the institution of the other country which is competent for the place of residence of the beneficiary to administer benefits on its behalf, and especially to effect payment of pensions.

The Office proposed the following text :

34. Administration of benefits by the insurance institution of the place of residence of the beneficiary :

Where the beneficiary resides in the territory of another Member adopting the scheme, the institution from which the benefit is due to be enabled to agree with the institution competent for the place of residence of the beneficiary that the latter institution should undertake the administration of the benefit, subject to repayment by the former.

A Workers' member insisted on the fact that the English text was not quite clear, and pointed out that it was necessary to state plainly that the insurance institution of the place of residence of the beneficiary would be liable to pay the benefit in full.

In view of the agreement which this Workers' member and the Office experts had come to, the Committee decided to draft the first sentence of point 34 as follows :

34. Administration and payment of total benefit by the insurance institution of the place of residence of the beneficiary :

The whole of point 34 as thus modified was adopted without opposition.

34 (a) Obligation to declare upon entry into the country of immigration

Two Government members submitted an amendment which, after modification in the course of the debate, read as follows:

34 *(a)*. Obligation to declare:

Obligation for an insured person who enters the insurance of a Member adopting the scheme to declare, within a certain time-limit reckoned from the date of such entry, the periods spent by him in the insurance of any other Member adopting the scheme.

Several Government members emphasised the usefulness of such a provision, which would greatly facilitate the work of the institutions liable to pay benefit.

Other Government members and one Workers' member feared that such a provision would be difficult to apply, since in many cases the insured persons were not in possession of sufficiently detailed information to make a declaration that could be guaranteed exact in every particular.

The amendment was adopted by 27 votes, without opposition.

34 (b) Establishment of a special body to facilitate the application of the international scheme

A Government member laid before the Committee the following amendment for the addition of a new point 34*(b)*:

34 *(b)*. Establishment of a special body for the purpose of assisting Members adopting the scheme in the application and interpretation thereof.

The author of the amendment explained that the application of the international scheme would give rise to doubts and difficulties on many points of detail, and the special international body contemplated in the amendment might render very important services to Members adopting the scheme. He emphasised, moreover, that the special body would trespass neither on the duties of the Office and the Committee on Article 408, nor on the competence of the Permanent Court of International Justice with respect to the interpretation of international Conventions. In order to remove any doubt on the latter point, he agreed to delete the words " and interpretation " from his amendment.

A Workers' member requested that provision should be made for the co-operation not only of the Governments on the

body in question, but also of the workers' and employers' organisations, in accordance with the principles governing the International Labour Conference and the Governing Body of the Office.

An Employers' member expressed doubt concerning the necessity for the creation of such a special body, for which there was no precedent, and suggested that the International Labour Office itself might be able to give all the help necessary to facilitate the application of the international scheme.

Other members expressed themselves as being in favour of the creation of a body of this kind since the Office did not appear to them to possess wide enough powers to be able to assist Governments in the application of the international scheme.

The amendment, modified by the deletion of the words " and interpretation ", was adopted by 20 votes to 8.

V. — Operation of International Scheme

35. *Date of coming into force*

The date on which the Draft Convention establishing the international scheme for the maintenance of rights would come into force would be determined according to the usual rules : it would come into force twelve months after the ratifications of two Members had been registered ; thereafter it would come into force for each Member twelve months after the registration of its ratification.

These provisions, already established by tradition, are mentioned here merely for the purpose of emphasising that the putting into force of the Convention by each Member would be obligatory on the expiry of twelve months from the date of its ratification.

The Office proposed the following text :

35. Date of coming into force .
   (a) initial coming into force :
       twelve months after the registration of ratification by two Members :
   (b) coming into force for other Members :
       twelve months after the registration of their ratifications.

The Office text was adopted without discussion by 34 votes, without opposition.

36. *Pensions not awarded or else suspended by reason of residence abroad*

The provisions relating to the maintenance of acquire rights have as their principal object the abolition of th

restrictions imposed on the receipt of pensions during residence abroad.

In the absence of an Article dealing expressly with pensions which have not been awarded or have been suspended before the coming into force of the Convention, simply on the ground of residence abroad, the Convention would apply only to events which happened subsequently to its coming into force.

Since the residence condition ought not to apply to beneficiaries under the Convention, it would be just to stipulate, on behalf of persons who fulfil in other respects the conditions laid down in the Convention, that pensions in respect of which no award has been made or which have been suspended, merely because of residence abroad, should now be granted or resumed. The effect of the Convention would thus be retroactive as regards pension rights but not as regards payment of pensions; for there would be no liability to pay pension instalments for the period preceding the date when it was put into force.

The Office proposed the following text:

36. *Pensions in respect of which no award has been made, or which have been suspended, because the persons otherwise entitled to them reside abroad:*

Award or resumption of payment of such pensions from the coming into force of the scheme.

This text was adopted without discussion by 34 votes, without opposition.

37. *Recovery of rights in respect of periods antecedent to the coming into force of the Convention*

An international scheme for the maintenance of rights in course of acquisition which dealt only with rights arising in respect of periods subsequent to its coming into force would be of little value for the present generation of insured persons. For this reason all the bilateral treaties which have been concluded recently require, or at least enable, rights in respect of periods antecedent to the coming into force of the treaty to be restored: insured persons who before that date had passed out of insurance in one of the contracting countries into the insurance of the other and have for that reason lost all credit for the insurance periods spent in the first country recover, or may be allowed to recover, as from the date on which the treaty comes into force, their rights in respect of those periods. Thus, the effect of the treaty is retroactive as regards rights in respect of periods antecedent to its coming into force.

It would seem that in the international scheme to be established the same policy might be followed: in administering it account should be taken of periods of insurance

antecedent to the date when it is put into force by the Members concerned. Here also, however, the retroactive effect would be operative only as regards the rights in respect of these periods but not as regards the pension instalments which would have been due for these periods, so that no payment would have to be made for the period antecedent to the coming into force of the Convention for the Members concerned.

The Office proposed the following text :

37. Recovery of rights in respect of periods antecedent to the coming into force of the scheme :

In applying the scheme account to be taken of periods antecedent to the coming into force of the scheme

This text was adopted by 34 votes, without opposition.

38. *Review of previous awards*

If it is admitted that, in applying the Convention, account will be taken of rights in respect of periods antecedent to its coming into force, it becomes necessary to lay down the procedure for the review of awards already made, for the recovery of rights and for the making of awards in pursuance of the Convention.

The Office proposed the following text :

38. Review of previous awards and review of rights with a view to their recovery or to making an award in pursuance of the scheme

(a) The review takes place :

(1) ex officio ;

(2) at the instance of one of the insurance institutions concerned ;

(3) at the request of the claimant.

(b) The review does not take place :

(1) where the claim has been settled by a lump-sum payment ;

(2) where the person concerned was awarded a pension, before the scheme was put into operation, by the institutions of two or more Members adopting it.

(c) The review does not involve the payment of any arrears or repayment of benefit for the period antecedent to the coming into force of the scheme.

This text was adopted by 34 votes, without opposition.

39. *Undertaking by Members which have not yet established compulsory old-age insurance*

It is possible for the international scheme for the maintenance of rights to operate between Members adopting i

although their national laws are not necessarily equivalent. The arrangements for the maintenance of rights can operate irrespective of the level of protection guaranteed to the workers by the law of this or that Member. Each insurance institution, apart from the totalisation of insurance periods, would apply only the conditions prescribed by its own law, and equivalence in the matter of level of protection did not appear to the Office to be indispensable.

Nevertheless, in order to secure the proper working of the arrangements, insurance institutions concerned in the scheme must necessarily cover, if not all three risks of invalidity, old age and death, at least that of old age or of invalidity as well. Consequently, Members who adhere to the international scheme without having already established compulsory insurance against invalidity, old age and death, should undertake at the same time to introduce, within twelve months after the date of registration of their ratification, at least compulsory *old-age insurance or compulsory invalidity* insurance as well.

With this in mind the Office proposed the following text:

39. Undertaking by Members which have not yet set up a compulsory insurance scheme covering at least the risk of old age, or that of invalidity also, to do so within twelve months after the registration of their ratification.

The Office text failed to satisfy a Government member, who proposed that point 39 should be replaced by the following text:

39. In order to establish a certain equilibrium between the countries which wish to secure for their populations the advantages of the international scheme, ratification must imply:

(a) that invalidity, old-age, and widows' and orphans' insurance is already in force in the country concerned;

(b) that the country concerned has already ratified the Conventions concerning invalidity, old-age, and widows' and orphans' insurance adopted by the International Labour Conference at its Seventeenth Session, or at least such of these Conventions as apply to persons employed in industrial and commercial undertakings.

The mover of the amendment stated that in his opinion no State should be permitted to adopt the international scheme unless invalidity, old-age, and widows' and orphans' insurance was already in force in its territory, and unless such legislation reached the minimum standard laid down in the 1933 Conventions respecting invalidity, old-age, and widows' and orphans' insurance at least in so far as persons employed in industrial and commercial undertakings were concerned.

A Workers' member pointed out that it would be dangerous, and on occasion useless, to make the adoption of the international scheme by a Member dependent on the ratification by that Member of the 1933 Conventions, since it might happen that the legislation respecting invalidity, old-age, and widows' and orphans' insurance in operation in a State might reach or even exceed the standard laid down in the 1933 Conventions, and that State would be unable to ratify them because its national laws differed in some minor detail from the Conventions.

An Office expert stated that it must not be forgotten that the essential principle in the international scheme laid down in point 11 only obliged each Member to pay benefit calculated under its own law and the arrangements for maintenance might well operate between legislations of different levels.

The author of the amendment then withdrew his motion and proposed that it should be replaced by the following new amendment, to add point 39 (*a*) to the Office point 39 :

39 (*a*) Minimum conditions to be fulfilled by invalidity, old-age, or widows' and orphans' insurance laws of Members adopting the international scheme

Another Government member submitted an amendment more or less identical, differing from the above only by the substitution of the word " and " for the word " or ".

The two members who moved the above amendment agreed to replace the word " or " by the word " and " with a view to making provision also for minimum conditions in the case of widows' and orphans' insurance, where this branch of insurance existed under national laws.

The Office text of point 39 was adopted by 27 votes without opposition, and the amendment of the two Government members, according to its last tenor, by 16 votes to 8.

An Employers' member, returning to the essential idea of an amendment moved by a Government member concerning point 6, requested the addition of a new point 39 (*b*), which, after alteration in the course of debate, read as follows :

39 (*b*). Provisions applicable where the national law of one of the Members does not cover the three risks. Power of a Member adopting the scheme to apply only its own law in its relations with a Member (or Members) adopting the scheme which has (have) not set up a compulsory invalidity insurance or a compulsory widows' and orphans' insurance scheme.

The mover of this amendment noted that the text of point 39 as adopted allowed a Member whose laws did not cover the three risks to adopt the international scheme, and insisted on the necessity of consulting the Governments concerning the decision to be taken with a view to permittin

the scheme to operate where the laws of any State covered only the risk of old age.

The first part of the amendment of the Employers' member was adopted by 16 votes to 4, and the second part was rejected by 14 votes to 10.

39 (c). *Principle of equality of treatment of nationals and aliens*

A Government member pointed out that the 1933 Conventions respecting invalidity, old-age, and widows' and orphans' insurance establish equality of treatment of nationals and foreigners, and, if the future Convention respecting the maintenance of rights were ratified by States which have not ratified the 1933 Convention respecting invalidity, old-age, and widows' and orphans' insurance, the provisions concerning equality of treatment laid down in the said Conventions would not operate as regards those States. It was therefore necessary to consult the Governments on this matter. In consequence, he proposed to add a new point 39 *(c)*, drafted as follows :

> 39 *(c)*. Undertaking by Members adopting the proposed international scheme, but not having ratified the Conventions concerning compulsory invalidity, old-age, and widows' and orphans' insurance, to treat the nationals of any other Member on the same footing as their own nationals for the purpose of entering insurance and of insurance benefits.

The mover, in supporting his amendment, pointed out that the 1933 Conventions gave the Members bound by these Conventions the right not to pay the subsidies, supplements to or fractions of pensions payable out of public funds if the beneficiaries resided abroad, and he suggested that the following clause should be added to his amendment :

> Possible restrictions as regards any subsidy, or supplement to, or fraction of a pension which is payable wholly or mainly out of public funds.

The amendment thus modified was adopted by 30 votes, without opposition.

40. *Effects of denunciation*

The right to pensions and other benefits awarded in pursuance of the international scheme for the maintenance of rights should be secured once and for all. The bilateral treaties respect the principle of acquired rights and embody express provisions for this purpose. The international scheme to be established might imitate their example.

The Office proposed the following text:

40. Effects of denunciation:

Denunciation not to affect:

(a) the liabilities of insurance institutions in respect of claims which mature before the expiry of the scheme;

(b) the rights in respect of periods antecedent to the expiry of the scheme.

This text was adopted by 21 votes, without opposition.

41. *Relationship between international scheme and special treaties*

The Office had restricted itself to raising the problem of the relationship between the international scheme and special treaties and setting forth in the Grey Report the various solutions which might be contemplated.

A Government member declared that it would be advisable to consult the Governments concerning the two main possible solutions.

One solution consists in imposing on Members adopting the international scheme the obligation not to contract special treaties among themselves, if such treaties are incompatible with the international scheme. This solution implies the revision of existing treaties which contain rules not in conformity with those laid down in the international scheme. Treaties which might be concluded in the future should not deviate from the international scheme, except in so far as they conferred more extensive rights on migrant workers. The imperative character of the international regulations might be mitigated in favour of treaties already concluded by applying the rule which is frequently employed in international law, to the effect that a subsequent general law does not abrogate an antecedent special law.

A second solution would be to give Members adopting the international scheme the right to depart therefrom by means of special treaties. Nevertheless, it would be necessary to limit this right. Special treaties should not in any case affect the rights conferred on other States by the Convention. Moreover, the maintenance of rights should not be governed by special treaties except in so far as the conditions imposed thereby were not less favourable on the whole than those provided under the international scheme.

In order that the question put to the Governments on this matter should be unambiguous, the same Government member proposed to complete the Office text as follows:

41. Relationship between international scheme and special treaties:

(a) Obligation for Members adopting the international scheme not to conclude with one another special treaties incompatible with the international scheme;

(b) or power of Members adopting the international scheme to depart from the Convention by special treaties, provided that such treaties make positive provision for the maintenance of rights in course of acquisition and acquired rights under conditions at least as favourable, on the whole, as those laid down by the Convention.

A Workers' member insisted on the great importance of point 41, the necessity of setting forth precisely the relationship between the international scheme and special treaties already concluded or to be concluded hereafter, and the important part to be played by the special international body the establishment of which was contemplated, the duty of which — if the second solution were adopted — would be in particular to decide whether the special treaties maintained the rights under conditions at least as favourable, on the whole, as those laid down by the Convention. He also insisted on the importance of the representation of the workers on this body, in conformity with the demand previously put forward by the Workers' members.

To enable the Governments to be consulted more precisely with regard to treaties already concluded or to be concluded hereafter, a Government member proposed that paragraph (a) should be drafted as follows:

(a) Obligation for Members adopting the international scheme not to depart therefrom by special treaties already concluded, or to be concluded hereafter, between themselves which would be incompatible with the international scheme.

In the same manner, he proposed that in paragraph (b) the words "already concluded, or to be concluded hereafter" should be inserted after the words "special-treaties".

The mover of the main amendment accepted these changes, and the text of point 41, as modified, was adopted by 30 votes without opposition, reading as follows:

41. Relationship between international scheme and special treaties:

(a) Obligation for Members adopting the international scheme not to depart therefrom by special treaties already concluded, or to be concluded hereafter, between themselves, which would be incompatible with the international scheme;

(b) or power of Members adopting the international scheme to depart from the Convention by special treaties already concluded or to be concluded hereafter, provided that such treaties make positive provision for the maintenance of rights in course of acquisition and acquired rights under conditions at least as favourable, on the whole, as those laid down by the Convention.

DRAFT CONCLUSIONS

The Conference,

Having examined the Report submitted by the International Labour Office on the maintenance of rights in course of acquisition and acquired rights of migrant workers under invalidity, old-age, and widows' and orphans' insurance,

Considers that the question of the maintenance of acquired rights and rights in course of acquisition under invalidity old-age and widows' and orphans' insurance on behalf of workers who transfer their residence from one country to another, can be made the subject of a Draft Convention;

Invites the International Labour Office to consult the Governments on the following principal points:

I.—Establishment of International Scheme

1. Principle of the establishment, on behalf of workers who transfer their residence from one country to another, of an international scheme to organise, under compulsory invalidity, old-age, and widows' and orphans' insurance:

(a) the maintenance of rights in course of acquisition;

(b) the maintenance of acquired rights (including non-contributory pensions).

II.—Maintenance of Rights in Course of Acquisition

A. *Beneficiaries under International Scheme*

2. Application of the scheme to workers affiliated in succession to insurance institutions in two or more States Members adopting the scheme, and to the dependants of such workers.

3. Nationality of beneficiaries:

Application of scheme:

(a) either to all persons, irrespective of nationality;

(b) or only to persons who are nationals of Members adopting the scheme;

(c) or, where paragraph (b) is adopted, also to persons who have no nationality.

41. Relationship between international scheme and special treaties:

(a) Obligation for Members adopting the international scheme not to conclude with one another special treaties incompatible with the international scheme;

(b) or power of Members adopting the international scheme to depart from the Convention by special treaties, provided that such treaties make positive provision for the maintenance of rights in course of acquisition and acquired rights under conditions at least as favourable, on the whole, as those laid down by the Convention.

A Workers' member insisted on the great importance of point 41, the necessity of setting forth precisely the relationship between the international scheme and special treaties already concluded or to be concluded hereafter, and the important part to be played by the special international body the establishment of which was contemplated, the duty of which — if the second solution were adopted — would be in particular to decide whether the special treaties maintained the rights under *conditions at least as favourable, on the whole, as those* laid down by the Convention. He also insisted on the importance of the representation of the workers on this body, in conformity with the demand previously put forward by the Workers' members.

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In the same manner, he proposed that in paragraph *(b)* the words "*already concluded, or to be concluded* hereafter" should be inserted after the words "special-treaties".

The mover of the main amendment accepted these changes, and the text of point 41, as modified, was adopted by 30 votes without opposition, reading as follows:

41. Relationship between international scheme and special treaties:

(a) Obligation for Members adopting the international scheme not to depart therefrom by special treaties already concluded, or to be concluded hereafter, between themselves, which would be incompatible with the international scheme;

(b) or power of Members adopting the international scheme to depart from the Convention by special treaties already concluded or to be concluded hereafter, provided that such treaties make positive provision for the maintenance of rights in course of acquisition and acquired rights under conditions at least as favourable, on the whole, as those laid down by the Convention.

DRAFT CONCLUSIONS

The Conference,

Having examined the Report submitted by the International Labour Office on the maintenance of rights in course of acquisition and acquired rights of migrant workers under invalidity, old-age, and widows' and orphans' insurance,

Considers that the question of the maintenance of acquired rights and rights in course of acquisition under invalidity, old-age and widows' and orphans' insurance on behalf of workers who transfer their residence from one country to another, can be made the subject of a Draft Convention;

Invites the International Labour Office to consult the Governments on the following principal points:

I.—Establishment of International Scheme

1. Principle of the establishment, on behalf of workers who transfer their residence from one country to another, of an international scheme to organise, under compulsory invalidity, old-age, and widows' and orphans' insurance:

(*a*) the maintenance of rights in course of acquisition;

(*b*) the maintenance of acquired rights (including non-contributory pensions).

II.—Maintenance of Rights in Course of Acquisition

A. *Beneficiaries under International Scheme*

2. Application of the scheme to workers affiliated in succession to insurance institutions in two or more States Members adopting the scheme, and to the dependants of such workers.

3. Nationality of beneficiaries:

Application of scheme:

(*a*) either to all persons, irrespective of nationality;

(*b*) or only to persons who are nationals of Members adopting the scheme;

(*c*) or, where paragraph (*b*) is adopted, also to persons who have no nationality.

B. *Totalisation of Insurance Periods*

4. For the purpose of maintaining rights in course of acquisition as against each insurance institution concerned, totalisation of:

(a) contribution periods;

(b) and also periods in respect of which contributions are not payable but during which rights are maintained,

(1) either under the law of at least one of the institutions concerned;

(2) or only under the law of the particular institution concerned;

(c) and further, periods

(1) during which a pension is paid by an invalidity, old-age, and widows' and orphans' insurance institution of any other Member adopting the scheme;

(2) during which a pension or other cash benefit is paid under another branch of social insurance of another Member adopting the scheme, in so far as a corresponding pension or other cash benefit, paid under the social insurance of the Member concerned, would maintain rights in course of acquisition.

5. For the purpose of reckoning the qualifying period (minimum duration of liability to insurance) or the number of contributions prescribed for entitlement to special benefits (guaranteed minimum pensions) as against each of the insurance institutions concerned, totalisation of:

(a) contribution periods;

(b) and also periods in respect of which contributions are not payable but which are counted for the purpose of reckoning the qualifying period or the prescribed number of contributions,

(1) either under the law of at least one of the institutions concerned;

(2) or under the law of the particular institution concerned.

6. Occupational insurance schemes.

Restriction applicable where the national law of one of the Members subjects the award of certain benefits to the condition that the periods must have been spent in an occupation covered by a special scheme of insurance (e.g. salaried employees' insurance, miners' insurance):

For the purpose of reckoning the qualifying period or the prescribed number of contributions, only those periods spent under the corresponding special scheme or schemes of the other Member or Members are totalised.

6 *(a)* Where in any country there does not exist a special [illegible] occupation [illegible] be totalised [illegible] iod.

7. Application of the rules indicated in points [illegible] to other implications of insurance, in particular [illegible]

(a) recovery of rights;

(b) right to enter voluntary insurance.

8. Reckoning of concurrent periods:

Contribution periods and assimilated [illegible] taneously in two or more States Members [illegible] only for the purpose of totalisation.

9. Disregard of short periods:

For the purpose of totalisation [illegible] particular scheme of invalidity, [illegible] orphans' insurance, or solely [illegible] are counted only if, taken together, [illegible] duration (e.g. 75 contribution [illegible]

C. *Determination of* [illegible]

10. Appraisal by [illegible] of the claimant:

Each institution [illegible] determines only [illegible] satisfies the prescribed [illegible]

11. Liability of each insurance institution for benefit reckoned as follows:

(a) Benefits (benefit components) varying with the time spent in insurance:

Each institution with respect to which the claimant satisfies the qualifying conditions determines the amount due under its own law, having regard only to periods counted for the purpose of reckoning benefits under this law.

(b) Benefits (benefit components) determined independently of the time spent in insurance:

In this case only such fraction of the benefits, or benefit components, determined independently of the time spent in insurance (save the qualifying period), is due as corresponds to the ratio

(1) either of the periods counted for the purpose of reckoning benefits under the law of the institution to the total of the periods counted for the purpose of reckoning benefits under the laws of all the institutions concerned;

(2) or of the contribution periods spent under the law of the institution to the total of the contribution periods spent under the laws of all the insurance institutions concerned.

(Examples of benefits, or benefit components, determined independently of the number and amount of contributions: pensions the rate of which is the same for all pensioners, fixed sums or basic amounts determined independently of the time spent in insurance, fixed supplements, guaranteed minimum pensions or allowances.)

12. Application of rules indicated in point 11 *(a)* and *(b)* to subsidies, supplements or allowances which are wholly or mainly payable out of public funds.

13. Application of rule indicated in point 11 *(b)* in cases where the claimant is entitled to benefit from only one insurance institution even where periods are totalised.

13 *(a)* Power of the last institution with which the insured person is insured not to apply reduction according to the rule indicated in point 11 *(b)* where, on the happening of the event insured against, the person concerned is entitled to the maximum pension, in virtue of those periods only which he has spent with that institution.

14. Non-application of rule indicated in point 11 *(b)* to periods spent under a particular scheme of invalidity, old-age, and widows' and orphans' insurance, or only with a particular institution, which, taken together, are less than a minimum (e.g. 300 contribution days or 52 contribution weeks), the institutions concerned not being liable for any benefit.

15. Protective clause :

(a) A beneficiary entitled to benefits in at least two countries to be guaranteed total benefit equal to the benefit which he would obtain in respect only of the periods spent with a particular insurance institution.

(b) This institution to be liable for any complementary benefit due as the result of the operation of the guarantee.

(c) This complementary benefit to be reckoned, where several institutions are concerned, according to the amount of the highest complementary benefit which would be due from any one of the institutions, and the liability for it to be distributed among them in proportion to the complementary benefit which would have been due from each individually.

16. Maximum limit for total benefit :

(a) Power to limit the total benefit awarded by the insurance institutions of two or more countries to the amount of the benefit which would be due from the institution having the most favourable law on the basis of all the periods which are to be counted.

(b) Any reduction to be effected proportionally on each portion of the benefit.

17. Medical treatment and care :

(a) Desirability of charging the insurance institution of the place of residence with the provision, for persons who, on the ground of invalidity, would be entitled to claim a pension, of treatment and care for the purpose of preventing, postponing, alleviating or curing invalidity ;

(b) Rules for contribution by other institutions concerned towards the cost of treatment and care.

D. *Settlement of Claims*

18. Submission of claims for benefit :

(a) either to only one of the insurance institutions concerned (and, in particular, to the institution of the country of residence), which informs all the others mentioned in the claim ;

(b) or severally to each institution concerned.

19. Rate of exchange :

When a sum has to be calculated in terms of the currency of another Member, it is converted according to the relation between the two currencies in the foreign exchange market of the capital of the Member in whose currency it is expressed.

20. Provisional benefit :

Pending final settlement, grant by an insurance institution of provisional benefit of an amount at least equal to that payable in virtue only of insurance periods spent under its own law.

E. *Optional Provisions*

21. Discharge of liability by transfer of capital representing rights in course of acquisition :

Power of an insurance institution to discharge its liability to the insured person or his dependants by paying to the insurance institution which is thenceforward responsible for the insured person, subject to the latter institution's acceptance, the capital representing the rights in course of acquisition at the date of the departure of the insured person.

21 *(a)*. Power of Members, in agreement with one another, to depart from the rules indicated in point 11, for the purpose of reckoning the benefits for which each institution is liable, taking into consideration in particular the periods counted for the purpose of reckoning benefits under the law of each institution.

III. — Maintenance of Acquired Rights

A. *Beneficiaries under International Scheme*

22. Residence of beneficiaries :

Application of scheme :

(a) either to all beneficiaries, irrespective of their place of residence ;

(b) or only to beneficiaries resident in the territory of a Member adopting the scheme.

23. Nationality of beneficiaries :

Application of scheme :

(a) either to all beneficiaries, irrespective of nationality ;

(b) or only to beneficiaries who are nationals of Members adopting the scheme ;

(c) or, if paragraph *(b)* is adopted, also to all persons without nationality.

B. *Purposes of International Scheme*

24. Application of scheme :

(a) either to the entirety of the benefits the right to which has been acquired ;

(b) or only to benefits other than subsidies, supplements or allowances which are payable wholly or mainly out of public funds.

25. Subsidies, supplements or allowances which are payable wholly or mainly out of public funds to be granted :

(a) either to all persons, irrespective of nationality ;

(b) or only to nationals of Members adopting the scheme ;

(c) or, if paragraph *(b)* is adopted, also to all persons without nationality.

26. Restriction on commutation of pension for a lump sum :

Non-application to beneficiaries under the scheme, while resident in the territory of any other Member adopting the scheme, of any provisions of national law for the commutation of pensions for lump sums in case of residence abroad.

C. *Arrangements for Paying Benefits*

27. Medium of payment :

Power of an insurance institution liable to pay benefit to discharge its liability to the person entitled to benefit in the currency of its own country.

28. *Commutation of small pensions :*

Power of an insurance institution liable to pay benefit to commute, for a lump sum to be calculated according to the provisions applicable to the institution, a pension the monthly rate of which does not reach a certain minimum.

Special minimum in case of payment of two or more partial pensions.

29. *Provision for reduction and suspension :*

The provisions of the national law of a Member for the reduction or suspension of benefit in case of concurrent rights to other social insurance benefits or in case of exercise of an employment involving compulsory insurance apply to beneficiaries, even as regards benefit due from an insurance institution established in the territory of any other Member adopting the scheme and as regards the exercise of an employment in such territory.

IV. — Mutual Assistance in Administration

30. *Principle of mutual assistance :*

The authorities and the social insurance institutions of Members adopting the scheme to afford one another assistance to the same extent as they do in applying their own social insurance legislation.

31. *Investigations :*

Mutual assistance to include the necessary investigations and medical examinations requested by an insurance institution of any other Member adopting the scheme for the purpose of determining whether the persons in receipt of benefits for which this institution is liable satisfy the qualifying conditions.

32. *Expenses of mutual assistance :*

Rules for the repayment of expenses of mutual assistance :

(a) determination of the sum to be repaid according to the scale of the insurance institution or authority which affords assistance or, in the absence of a scale, repayment of the actual expenditure incurred ;

(b) date of repayment.

33. *Exemption from taxation :*

The privilege of exemption from taxation accorded for documents submitted to the authorities or insurance institu-

tions of one Member to be extended to the corresponding documents submitted in connection with the administration of the scheme to the authorities and institutions of any other Member adopting the scheme.

34. Administration and payment of total benefit by the insurance institution of the place of residence of the beneficiary:

Where the beneficiary resides in the territory of another Member adopting the scheme, the institution from which the benefit is due to be enabled to agree with the institution competent for the place of residence of the beneficiary that the latter institution should undertake the administration of the benefit subject to repayment by the former.

34 *(a)*. Obligation to declare:

Obligation for an insured person who enters the insurance of a Member adopting the scheme to declare, within a certain time-limit reckoned from the date of such entry, the periods spent by him in the insurance of any other Member adopting the scheme.

34 *(b)*. Establishment of a special body for the purpose of assisting Members adopting the scheme in the application thereof.

V. — Operation of International Scheme

35. Date of coming into force:

(a) initial coming into force:

twelve months after the registration of ratification by two Members;

(b) coming into force for other Members:
twelve months after the registration of their ratifications.

36. Pensions in respect of which no award has been made or which have been suspended, because the persons otherwise entitled to them reside abroad:
Award or resumption of payment of such pensions from the coming into force of the scheme.

37. Recovery of rights in respect of periods antecedent to the coming into force of the scheme:
In applying the scheme [illegible] taken of periods antecedent to the coming into force [illegible]

38. Review of previous awards and review of rights with a view to their recovery or to making an award in pursuance of the scheme:

(a) The review takes place:

(1) ex officio;

(2) at the instance of one of the insurance institutions concerned;

(3) at the request of the claimant.

(b) The review does not take place:

(1) where the claim has been settled by a lump-sum payment;

(2) where the person concerned was awarded a pension, before the scheme was put into operation, by the institutions of two or more Members adopting it.

(c) The review does not involve the payment of any arrears or repayment of benefit for the period antecedent to the coming into force of the scheme.

39. Undertaking by Members which have not yet set up a compulsory insurance scheme covering at least the risk of old age, or that of invalidity also, to do so within twelve months after the registration of their ratifications.

39 *(a)* Minimum conditions to be fulfilled by invalidity, old-age and widows' and orphans' insurance laws of Members adopting the scheme.

39 *(b)* Provisions applicable when the national law of one of the Members does not cover the three risks.

39 *(c)* Undertaking by Members adopting the scheme, but not having ratified the Conventions concerning compulsory invalidity, old-age, and widows' and orphans' insurance, to treat the nationals of any other Member on the same footing as their own nationals for the purpose of entering insurance and of insurance benefits. Possible restrictions as regards any subsidy or supplement to or fraction of a pension which is payable wholly or mainly out of public funds.

40. Effects of denunciation:

Denunciation not to affect:

(a) the liabilities of insurance institutions in respect of claims which matured before the expiry of the scheme;

(b) rights in respect of periods antecedent to the expiry of the scheme.

41. Relationship between international scheme and special treaties :

(a) Obligation for Members adopting the international scheme not to depart therefrom by special treaties already concluded, or to be concluded hereafter, between themselves, which would be incompatible with the international scheme ;

(b) or power of Members adopting the international scheme to depart from the Convention by special treaties, already concluded or to be concluded hereafter, *provided that such treaties* make positive provision for the maintenance of rights in course of acquisition and acquired rights under conditions at least as favourable, on the whole, as those laid down by the Convention.

Vote on Report

The Report as a whole was adopted by 22 votes, without opposition.

Geneva, 19 June 1934.

(Signed) L. FORGERON,
G. BUISSON,
Vice-Chairmen.

E. STERN,
Reporter.

* * *

B. — Discussion of the Report of the Committee in Plenary Sitting of the Conference

The report reproduced above was submitted to the Conference at its 21st sitting on 21 June 1934 ; it was discussed at that sitting and the following sitting on 22 June. The [illegible] which took place is reproduced *in extenso* in Nos. 28 [illegible] of the *Provisional Record* of the Conference.

Only one amendment to the draft conclusions [illegible] Committee was proposed. This amendment was [illegible]

(a) contribution periods ;

(b) and also periods in respect of which contributions are not payable but during which rights are maintained,

either *(i)* under the law of at least one of the institutions concerned ;

or *(ii)* only under the law of the institution which is totalising ?

Please state whether you prefer solution *(i)* or solution *(ii)*.

5. Further, do you consider that, for the purpose of maintaining rights in course of acquisition, the periods to be totalised should comprise :

(a) periods during which a pension is paid by an invalidity insurance, old-age insurance, or widows' and orphans' insurance, institution of any other Member adopting the international scheme ?

(b) and also periods during which a pension or other cash benefit is paid by another branch of social insurance of another Member adopting the scheme in so far as a corresponding pension or other cash benefit, paid under the law of the institution which is totalising, would maintain rights in course of acquisition ?

Totalisation for reckoning qualifying period

6. Do you consider that, for the purpose of reckoning the qualifying period (minimum duration of liability to insurance) or the number of contributions prescribed for entitlement to special advantages (guaranteed minimum pensions) as against each of the institutions concerned, the periods to be totalised should comprise :

(a) contribution periods ;

(b) and also periods in respect of which contributions are not payable but which are counted for the purpose of reckoning the qualifying period or the prescribed number of contributions :

either *(i)* under the law of at least one of the institutions concerned ;

or *(ii)* only under the law of the institution which is totalising ?

Please state whether you prefer solution *(i)* or solution *(ii)*.

Totalisation with respect to special insurance schemes

7 *(a)*. Do you consider, however, that a restriction should be applied where the national law of one of the Members concerned subjects the grant of certain advantages to the condition that the periods must have been spent in an occupation covered by a special insurance scheme (e.g. salaried employees' insurance, miners' insurance)?

(b) If so, do you propose that in such cases only periods spent under the corresponding special insurance scheme of the other Member or Members concerned should be totalised for the purpose of reckoning the qualifying period or the prescribed number of contributions ?

(c) Where, however, there does not exist in one of the States Members referred to in paragraph *(b)* a special insurance scheme for the occupation in question, do you agree that periods spent in that State in the occupation in question under a non-corresponding scheme should be totalised for the purpose of reckoning the qualifying period ?

(d) If the reply to *(c)* is in the affirmative, should totalisation be effected compulsorily, or at the discretion of the institution reckoning the qualifying period ?

Totalisation for recovery of rights and for right to enter voluntary insurance

8. Do you consider that the rules for the totalisation of insurance periods for the purpose of reckoning the qualifying period should also apply:

(a) to the recovery of rights ?

(b) to the right to enter voluntary insurance ?

Reckoning of concurrent periods

9. Do you propose to provide that contribution periods and assimilated periods spent simultaneously in two or more States Members participating in the scheme shall be reckoned once only for the purpose of totalisation ?

Disregard of short periods

10. *(a)* Do you propose that it should be laid down that, for the purpose of totalisation, periods should be reckoned only if in the aggregate they exceed a certain minimum ?

(b) If so, must this minimum have been spent

(i) under a particular national scheme of invalidity insurance, of old-age insurance, or of widows' and orphans' insurance ?

or *(ii)* entirely with a particular insurance institution ?

(c) How do you propose to fix this minimum ?

Determination of Benefit Liability of each Insurance Institution

Appraisal by each institution of rights of claimant

11. Do you agree with the principle that each institution, while totalising the periods to be counted, should determine only in accordance with its own law whether the claimant satisfies the prescribed qualifying conditions ?

Calculation of benefit due from each institution

12. Do you consider that the benefit due from each institution should be calculated according to the following rules ?

(a) Benefits (benefit components) varying with the time spent in insurance :

Each institution with respect to which the claimant satisfies the qualifying conditions determines the amount in accordance with its own law, having regard only to periods counted for the purpose of calculating benefits under that law.

(b) Benefits (benefit components) determined independently of the time spent in insurance [1] :

In this case only benefits, or benefit components, determined independently of the time spent in insurance (save the qualifying period), are to be reduced in the proportion :

either *(i)* of the periods counted for the purpose of calculating benefits under the law of the institution to the total of the periods counted for the purpose of calculating benefits under the laws of all the institutions concerned ;

[1] Examples of benefits, or benefit components, determined independently of the number and amount of contributions : pensions the rate of which is the same for all pensioners, fixed sums or basic amounts determined independently of the time spent in insurance, fixed supplements, guaranteed minimum pensions or allowances.

or *(ii)* of the contribution periods spent under the law of the institution to the total of the contribution periods spent under the laws of all the institutions concerned.

Please state whether you prefer solution *(i)* or solution *(ii)*.

13. Do the rules suggested in paragraphs *(a)* and *(b)* of Question 12 appear to you sufficiently explicit for the purpose of being applied to the different types of benefits, whether they vary with the time spent in insurance or are determined independently of the time spent in insurance ?

If not, please indicate what modifications or additional provisions are desirable.

Subsidies, supplements or allowances payable out of public funds

14. Do the rules suggested in paragraphs *(a)* and *(b)* of Question 12 appear to you to be likewise applicable to subsidies, supplements or allowances which are payable wholly or mainly out of public funds ?

If not, what other rules do you propose to apply to such subsidies, supplements or allowances ?

Application of reduction rules where only one institution [illegible] liable for benefit

15. Do you consider that reduction according to [illegible] *(b)* of Question 12 should be effected where the [illegible] entitled to benefit from only one institution and [illegible] only as the result of the totalisation of insurance periods ?

Power not to apply reduction rules where claimant [illegible] maximum pension

16. Do you consider that the last institution [illegible] the insured person is insured should be [illegible] the reduction rules suggested in paragraph [illegible] where, on the happening of the event [illegible] claimant is entitled to the maximum pension [illegible] periods only which he has spent with the [illegible]

Non-application of reduction rules [illegible]

17. *(a)* Do you propose to [illegible] aggregate are below a certain [illegible] liability for benefit on an institution [illegible] otherwise be liable ?

(b) If so, must this minimum have been spent

(i) under a particular national scheme of invalidity insurance, of old-age insurance, or of widows' and orphans' insurance ?

or *(ii)* entirely under a particular institution ?

(c) How do you propose to fix this minimum ?

(d) Further, do you propose that it should be laid down that the reduction rule suggested in clause *(b)* of Question 12 is not to be applied by any of the other institutions concerned in respect of periods which in the aggregate are below the minimum fixed and which, in accordance with clause *(a)* above, do not entail liability for benefit ?

Protective clause

18. *(a)* Do you consider that a beneficiary entitled to benefit in at least two States Members participating in the international scheme should be guaranteed a total benefit equal to the benefit which he would obtain in respect only of the periods spent with a particular institution ?

(b) If so, do you propose that any complementary benefit due as a result of the operation of this guarantee should be due from that institution ?

(c) Do you agree that, where several institutions are concerned, the complementary benefit should be reckoned according to the amount of the highest complementary benefit which would be due from any one of these institutions, the liability for it to be distributed among them in proportion to the complementary benefit which would have been due from each individually ?

(d) If the reply to *(c)* is in the negative, what other rules do you propose for reckoning the complementary benefit and distributing liability for it ?

Maximum limit for total benefit

19. *(a)* Do you propose to give power to limit the total benefit awarded by the institutions of two or more Members participating in the international scheme to the amount of the benefit which would be due in respect of all the periods which are to be counted from the institution having the most favourable law ?

(b) If so, should any reduction on this account be effected proportionally on each portion of the total benefit ?

Medical treatment and care

20. *(a)* Do you consider it desirable to entrust the institution of the place of residence with the provision, for persons who, on the ground of invalidity, would be entitled to claim a pension, of treatment and care for the purpose of preventing, postponing, alleviating or curing invalidity ?

(b) If the reply to *(a)* is in the affirmative, do you consider that the other institution or institutions concerned should share in the cost of treatment and care and, if so, according to what rules ?

SETTLEMENT OF CLAIMS

Submission of claims for benefit

21. Do you consider that claims for benefit under the international scheme should be submitted

(i) to only one of the institutions concerned (in particular to the institution of the country of residence) which would inform the others mentioned in the claim ?

or *(ii)* severally to each institution concerned ?

Rate of exchange

22. *(a)* Do you consider that, when a sum has to be converted into the currency of another Member participating in the international scheme, it should be converted according to the relation between the two currencies in the foreign exchange market of the capital of the Member in whose currency it is expressed ?

(b) Further, do you consider it desirable to specify the date on which the exchange rate for the purpose of conversion is to be ascertained ? If so, what date do you propose ?

Provisional benefit

23. *(a)* Do you propose to provide for the grant by each institution, pending final settlement, of provisional benefit at least equal to that payable in virtue only of insurance periods spent under its own law ?

(b) If so, do you consider that the grant of such provisional benefit should be :

(i) obligatory for each institution ?

or *(ii)* optional ?

Optional Provisions

Discharge of liability by transfer of capital representing rights in course of acquisition

24. Do you propose to give power to an insurance institution to discharge its liability to the insured person and his dependants by paying to the institution which is thenceforward responsible for him, subject to agreement between the two institutions, the capital representing his rights in course of acquisition at the date of his departure ?

Power of Members to agree to depart from rules suggested in Question 12

25. Do you propose to give power to Members, in agreement with one another, to depart from the rules suggested in paragraphs *(a)* and *(b)* of Question 12 for the purpose of calculating the benefits for which each institution is liable, on the basis in particular of the periods counted for the purpose of reckoning benefits under the law of each institution ?

III. — MAINTENANCE OF ACQUIRED RIGHTS

Beneficiaries

Residence of beneficiaries

26. Do you consider that, for the purpose of maintaining acquired rights, the international scheme should apply to persons entitled to benefits and resident outside the country in which the institution liable for benefit is established, and should so apply

(i) irrespective of their place of residence ?

or *(ii)* only while resident in the territory of any other Member adopting the scheme ?

Nationality of beneficiaries

27. Further, do you consider that the international scheme should apply :

(i) to all persons, irrespective of nationality ;

or *(ii)* only to nationals of Members adopting the scheme ?

In the latter case, do you propose to include also among the beneficiaries of the scheme all persons without nationality ?

Rights to be covered by International Scheme

Insurance benefits

28. Do you consider that the international scheme should provide for the maintenance:

(i) of the entirety of the benefits, the right to which has been acquired ?

or (ii) only of benefits other than subsidies, supplements or allowances which are payable wholly or mainly out of public funds ?

Subsidies, supplements or allowances payable out of public funds

29. In case the international scheme should provide for the maintenance of subsidies, supplements or allowances payable wholly or mainly out of public funds, should this advantage apply

(i) to all persons, irrespective of nationality ?

(ii) or only to nationals of Members adopting the scheme?

In the latter case, should this advantage apply also to all persons without nationality ?

Restriction on commutation

30. Do you consider that the provisions of national law relating to the commutation of a pension for a lump sum in case of residence abroad should not apply to beneficiaries under the international scheme while resident in the territory of any other Member adopting the scheme ?

Non-contributory pensions

31. *(a)* Do you consider that the international scheme should provide for the maintenance of pensions awarded under a non-contributory scheme on behalf of persons entitled to such pensions and resident outside the country which is liable for them ?

(b) If so, do you propose to grant this advantage to persons entitled to non-contributory pensions:

(i) irrespective of their place of residence ?

or (ii) only while resident in the territory of any other Member adopting the scheme ?

Arrangements for paying Benefits

Medium of payment

32. Do you consider it desirable to lay down that institution liable for benefit under the international

(b) Coming into force for other Members:
Twelve months after registration of their ratifications.

Body to assist Members in applying scheme

42. *(a)* Do you consider that it would be useful to establish a special body for the purpose of assisting Members adopting the international scheme in the application thereof?

(b) If so, how do you propose to regulate the composition of this body?

Pensions not awarded or else suspended by reason of residence abroad

43. Do you consider that pensions in respect of which no award has been made or which have been suspended, before the coming into force of the international scheme, because the persons concerned reside abroad, should be awarded or resumed as from the coming into force of the scheme?

Recovery of rights in respect of periods antecedent to the coming into force of the scheme

44. Do you consider that, for the purpose of maintaining rights in course of acquisition under the international scheme, account should be taken of rights in respect of periods antecedent to the coming into force of the scheme?

Review of previous awards and review of rights in pursuance of the scheme

45. *(a)* Do you consider that an obligation should be imposed to review awards made before the coming into force of the international scheme, and to review rights for the purpose of reviving them or making an award in pursuance of the scheme, provided that review shall not involve the payment of any arrears or repayment of benefit for the period antecedent to the coming into force of the scheme?

(b) If so, do you consider that the review should take place:

(i) as a matter of course?
or *(ii)* only at the instance of one of the institutions concerned?
or *(iii)* only at the request of the claimant?

(c) Do you consider, however, that review should not take place:

(i) where the claim has been settled by a lump-sum payment?

(ii) where the person concerned was awarded a pension before the international scheme came into force in respect of the institutions of two or more Members participating in the scheme ?

Undertaking by Members not having established compulsory old-age insurance

46. Do you consider that Members who, at the date of registration of their ratifications, have not yet set up a scheme of compulsory insurance (or a scheme of non-contributory pensions) covering at least the risk of old age, or that of invalidity also, should by ratification bind themselves to introduce, within the twelve months following the registration of their ratifications, a scheme of compulsory insurance (or non-contributory pensions) :

(i) covering the risk of old age :

or *(ii)* covering the risks of old age and invalidity ?

Minimum conditions to be fulfilled by insurance laws

47. *(a)* Further, do you consider that, in order to be able to claim in their entirety the advantages provided by the international scheme in connection with the maintenance of rights in course of acquisition, every Member participating in the scheme must have enacted concerning invalidity insurance, old-age insurance, and widows' and orphans' insurance, legislation fulfilling minimum conditions ?

(b) If so, what, in your view, should be the minimum conditions to be fulfilled ?

(c) If not, do you consider that Members participating in the internat[illegible] in their relations with any other Member likewise participating in the scheme, but whose law only covers two of these risks (or only the risk of old age) ?

(d) If the reply to *(c)* is in the affirmative, what special provisions should, in your view, be applied such cases ?

Equality of treatment for nationals of Members adopting scheme

48. *(a)* Do you consider that adoption of the international scheme should involve for every Member (in so far as it has not ratified the Draft Conventions adopted by the International Labour Conference concerning [illegible] insurance [illegible] and or[illegible]

any other Member participating in the scheme on the same footing as its own nationals for the purpose of entering compulsory invalidity, old-age and widows' and orphans' insurance, and for the purpose of the benefits of such insurance ?

(b) If so, do you consider that this undertaking might be restricted so far as concerns any subsidy, supplement to or fraction of a pension which is payable wholly or mainly out of public funds ? In that case, what restrictions do you propose to lay down ?

Effects of denunciation

49. Do you consider that it should be laid down that denunciation by a Member of the Convention establishing the international scheme shall not affect :

(a) the liabilities of insurance institutions in respect of claims which matured before the scheme expired for this Member ?

(b) rights in course of acquisition in respect of periods antecedent to the expiry of the scheme for this Member ?

Relationship between international scheme and special treaties

50. *(a)* Do you consider that Members adopting the international scheme should undertake not to depart therefrom by concluding between themselves special treaties which would be incompatible with the international scheme ?

(b) If so, do you consider that the same undertaking should be provided for as regards special treaties concluded between Members participating in the international scheme before the scheme came into force for them ?

(c) If it is your view that the undertaking referred to in paragraph *(a)* should not be required of Members participating in the international scheme, do you consider that they should be empowered to depart from the international scheme by concluding special treaties between themselves, subject to the proviso that such treaties make positive provision for the maintenance of rights in course of acquisition and acquired rights under conditions at least as favourable on the whole as those laid down by the international scheme ?

(d) If the reply to *(c)* is in the affirmative, do you conside that the same proviso should apply as regards special treatie concluded by Members participating in the internationa scheme and before the coming into force of the scheme fo them ?